

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANTHONY VASQUEZ, aka) Case No. CV 09-7273-VAP(RC)
ANTHONY M. VASQUEZ,)
)
Petitioner,)
vs.)
) OPINION AND ORDER ON A
PEOPLE OF THE STATE OF) PETITION FOR HABEAS CORPUS
CALIFORNIA, ¹)
)
Respondent.)
_____)

On October 6, 2009, petitioner Anthony Vasquez, aka Anthony M. Vasquez, a person in state custody proceeding pro se, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 challenging his sentence in Los Angeles County Superior Court case no. NA056268.

¹ The petitioner has not named the proper respondent, as required by Rule 2(a) of the Rules Governing Section 2254 Cases in the United States District Courts. "This person typically is the warden of the facility in which the petitioner is incarcerated." Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994); Brittingham v. United States, 982 F.2d 378, 379 (9th Cir. 1992) (per curiam). However, since this is a second or successive petition, which petitioner does not have authorization to file, it would be futile for the Court to order petitioner to amend the petition to name the proper respondent.

BACKGROUND

This Court, pursuant to Federal Rule of Evidence 201, takes judicial notice of the records in a prior federal habeas corpus action brought by petitioner: (1) Vasquez v. Hedgpeth, case no. CV 07-3560-VAP(RC) ("Vasquez I"). The records in Vasquez I show that on June 1, 2007, petitioner filed his first federal habeas corpus petition challenging the same criminal judgment he challenges here, and on December 2, 2008, Judgment was entered in Vasquez I denying the habeas petition on the merits and dismissing the action. On January 9, 2009, petitioner filed a Notice of Appeal to the Ninth Circuit Court of Appeals, which is currently determining whether to grant petitioner's request for a certificate of appealability; however, on January 27, 2009, this Court denied petitioner's request for a certificate of appealability.

DISCUSSION

The instant petition is governed by the provisions of the Antiterrorism and Effective Death Penalty Act of 1996 ("the Act"). Section 106 of the Act amends 28 U.S.C. § 2244(b) to read, in pertinent part, as follows: "Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A).

"Section 2244(b)(3)(A) 'is an allocation of subject-matter jurisdiction to the court of appeals. A district court must dismiss a second or successive petition [. . .] unless the court of appeals has

1 given approval for the filing.'" In re Page, 170 F.3d 659, 661 (7th
2 Cir. 1999) (quoting Nunez v. United States, 96 F.3d 990, 991 (7th Cir.
3 1996)), cert. denied, 528 U.S. 1162 (2000); see also Cooper v.
4 Calderon, 274 F.3d 1270, 1274 (9th Cir. 2001)("When the AEDPA is in
5 play, the district court may not, in the absence of proper
6 authorization from the court of appeals, consider a second or
7 successive habeas application." (quoting Libby v. Magnusson, 177 F.3d
8 43, 46 (1st Cir. 1999)).

9
10 Here, the instant petition challenging petitioner's criminal
11 judgment is a second or successive petition, which raises claims
12 petitioner could have raised in Vasquez I. Moreover, it plainly
13 appears on the face of the petition that petitioner has not moved in
14 the Ninth Circuit Court of Appeals for an order authorizing this Court
15 to consider the instant successive petition. Under the Act, a
16 successive habeas petition is not a matter of right -- and the
17 gatekeeping function belongs to the Court of Appeals, not to the
18 district court. Felker v. Turpin, 518 U.S. 651, 661, 116 S. Ct. 2333,
19 135 L. Ed. 2d 827 (1996). This Court, thus, must dismiss the instant
20 habeas corpus petition as a second or successive petition for which it
21 lacks subject matter jurisdiction under 28 U.S.C. § 2244(b)(3).

22
23 Rule 4 of the Rules Governing Section 2254 Cases in the United
24 States Courts provides that "[i]f it plainly appears from the petition
25 and any attached exhibits that the petitioner is not entitled to
26 relief in the district court, the judge must dismiss the petition and

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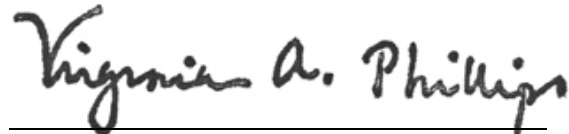
1 direct the clerk to notify the petitioner." 28 foll. U.S.C. § 2254,
2 Rule 4.

3
4 **ORDER**

5 IT IS HEREBY ORDERED that Judgment be entered SUMMARILY
6 DISMISSING the petition for writ of habeas corpus for lack of subject
7 matter jurisdiction.

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9 IT IS FURTHER ORDERED that the Clerk shall notify petitioner of
10 the dismissal.

11
12 DATE: October 23, 2009



VIRGINIA A. PHILLIPS
UNITED STATES DISTRICT JUDGE

13
14 PRESENTED BY:

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16 DATE: October 7, 2009

17 /S/ ROSALYN M. CHAPMAN
18 ROSALYN M. CHAPMAN
UNITED STATES MAGISTRATE JUDGE

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